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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0086]

RIN 0579-AE07

Importation of Fresh Peppers From Ecuador Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fresh peppers into the United States from Ecuador. As a condition of entry, the fruit will have to be produced in accordance with a systems approach that includes requirements for fruit fly trapping, pre-harvest inspections, production sites, and packinghouse procedures designed to exclude quarantine pests. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador stating that the consignment was produced and prepared for export in accordance with the requirements in the systems approach. This action allows for the importation of fresh peppers from Ecuador while continuing to provide protection against the introduction of plant pests into the United States.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352; Claudia.Ferguson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-73, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On April 24, 2015, we published in the Federal Register (80 FR 22930-22934, Docket No. APHIS-2014-0086) a proposal¹ to amend the regulations to allow the common bell pepper (Capsicum annuum L.), locoto pepper (Capsicum baccatum L.), habanero pepper (Capsicum chinense Jacq.), tabasco pepper (Capsicum frutescens L.), and manzano pepper (Capsicum pubescens Ruiz & Pav.) to be imported into the United States under a systems approach. (Hereafter we refer to these species as “peppers.”) We also prepared a pest risk assessment (PRA) and a risk management document (RMD). The PRA evaluates the risks associated with the importation of fresh peppers from Ecuador into the United States. The RMD relies upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of fresh peppers from Ecuador.

¹ To view the proposed rule and supporting documents, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0086>.

In the proposed rule, we noted that the PRA rated six plant pests as having a high pest risk potential for following the pathway of peppers from Ecuador into the United States: The insects Anastrepha fraterculus, Ceratitis capitata, Spodoptera litura, Thrips palmi, and Tuta absoluta, and the fungus Puccinia pampeana. The PRA rated the insect Neoleucinodes elegantalis and the Andean potato mottle virus with a medium pest risk potential.

We determined in the PRA that measures beyond standard port of arrival inspection will mitigate the risks posed by these plant pests and proposed a systems approach that includes requirements for fruit fly trapping, pre-harvest inspections, production sites, and packinghouse procedures designed to exclude quarantine pests. We also proposed that the fruit be imported in commercial consignments only and accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador stating that the consignment was produced and prepared for export in accordance with the systems approach.

We solicited comments concerning our proposal for 60 days ending June 23, 2015. We did not receive any comments.

We have made one minor change to this final rule, i.e., we have added tomato leaf miner as another common name associated with the plant pest Tuta absoluta.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule with the change noted.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

This rule amends the regulations to allow the importation of fresh peppers from Ecuador into the United States when a systems approach to pest risk mitigation is used to prevent the introduction of quarantine pests. The systems approach will integrate prescribed mitigation measures that cumulatively achieve the appropriate level of phytosanitary protection.

The most recent production data available show that fresh pepper yields in Ecuador have expanded from approximately 12,522 pounds per hectare (pounds/ha) in 1996 to approximately 66,361 pounds/ha in 2006. The total quantity of fresh peppers that were exported from Ecuador in 2006 and 2007 was 96.3 metric tons (MT) and 206.5 MT, respectively. Sea shipping containers that are 40 feet in length hold approximately 20 U.S. MT. Considering the total volume exported from Ecuador during these years, APHIS estimates imports of no more than 10 containers (200 MT) of fresh peppers from Ecuador into the United States annually. This quantity is equivalent to less than 0.02 percent of annual U.S. fresh pepper production. Similarly, the estimated quantity of fresh pepper imports from Ecuador (200 MT annually) is minimal compared to the total quantity of fresh peppers imported by the United States in recent years (800,000 MT annually).

In the United States, the average value of bell pepper production per farm in 2012 was approximately \$52,300, and the average value of chili pepper production per farm was approximately \$20,700. Both levels are well below the small-entity standard of \$750,000.

Establishments classified within NAICS 111219, including pepper farms, are considered small by the Small Business Administration (SBA) if annual sales are not more than \$750,000.

Accordingly, pepper growers are predominantly small entities according to the SBA standard.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows fresh pepper fruit to be imported into the United States from Ecuador. State and local laws and regulations regarding fresh pepper fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0437, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-74 is added to read as follows:

§ 319.56-74 Peppers from Ecuador.

Fresh peppers (Capsicum annum L., Capsicum baccatum L., Capsicum chinense Jacq., Capsicum frutescens L., and Capsicum pubescens Ruiz & Pav.) from Ecuador may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: Andean potato mottle virus; Anastrepha fraterculus (Wiedemann), South American fruit fly; Ceratitis capitata (Wiedemann), Mediterranean fruit fly; Neoleucinodes elegantalis (Guenée), a fruit boring moth;

Puccinia pampeana Speg., a pathogenic fungus that causes pepper and green pepper rust; Spodoptera litura (Fabricius), a leaf-eating moth; Thrips palmi Karny, an arthropod; and Tuta absoluta (Meyrick) Povolny, South American tomato moth, tomato leaf miner.

(a) General requirements. The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the specific requirements as set forth in this section.

(b) Commercial consignments. Peppers from Ecuador may be imported in commercial consignments only.

(c) Production site requirements. (1) Pepper production sites must consist of pest-exclusionary structures, which must have double self-closing doors and have all other windows, openings, and vents covered with 1.6 mm (or less) screening.

(2) All production sites that participate in the pepper export program must be registered with the NPPO of Ecuador.

(3) The production sites must be inspected prior to each harvest by the NPPO of Ecuador or its approved designee in accordance with the operational workplan. If any quarantine pests are found to be generally infesting or infecting the production site, the NPPO of Ecuador will immediately prohibit that production site from exporting peppers to the United States and notify APHIS of this action. The prohibition will remain in effect until the NPPO of Ecuador and APHIS agree that the pest risk has been mitigated. If a designee conducts the program, the designation must be detailed in the operational workplan. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

(4) The registered production sites must conduct trapping for the fruit flies A. fraterculus and C. capitata at each production site in accordance with the operational workplan.

(5) If a single A. fraterculus or C. capitata is detected inside a registered production site or in a consignment, the NPPO of Ecuador must immediately prohibit that production site from exporting peppers to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of Ecuador and APHIS agree that the risk has been mitigated.

(6) The NPPO of Ecuador must maintain records of trap placement, checking of traps, and any quarantine pest captures in accordance with the operational workplan. Trapping records must be maintained for APHIS review for at least 1 year.

(7) The NPPO of Ecuador must maintain a quality control program, approved by APHIS, to monitor or audit the trapping program in accordance with the operational workplan.

(d) Packinghouse procedures. (1) All packinghouses that participate in the export program must be registered with the NPPO of Ecuador.

(2) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(3) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may only accept peppers from registered approved production sites.

(e) Phytosanitary certificate. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador bearing the additional declaration that the consignment was produced and prepared for export in accordance with the requirements of this section. The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control number 0579-0437)

Done in Washington, DC, this 19th day of October 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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